

SEP 14 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBINSON WALTER SMITH,

Defendant-Appellant.

No. 06-30021

D.C. No. CR-05-05134-RBL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted September 11, 2006 ^{**}

Before: PREGERSON, T. NELSON, and GRABER, Circuit Judges.

Robinson Walter Smith appeals the 235-month sentence imposed following his jury conviction for being a felon in possession of a firearm, in violation of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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18 U.S.C. §§ 922(g)(1), 924(e)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Smith contends that he was entitled to a jury trial on the issue of whether he had suffered three prior felony convictions under the Armed Career Criminal Act. Smith, however, concedes this argument is foreclosed by *United States v. Lopez-Torres*, 443 F.3d 1182, 1185 (9th Cir. 2006), and seeks only to preserve this argument for further review.

We have received and reviewed Smith's August 25, 2006 pro se motion for leave to file a supplemental pro se brief. The motion is denied.

Smith's August 25, 2006 pro se motion to proceed in forma pauperis is denied as moot. On February 10, 2005, the district court granted Smith in forma pauperis status, and that status has not been revoked. Accordingly, the Clerk is directed to amend the docket to reflect Smith's in forma pauperis status.

Smith's September 5, 2006 pro se motion to hold his appeal in abeyance is denied.

Smith is reminded that he represented by counsel, and only counsel is authorized to file motions on his behalf.

AFFIRMED.